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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,

11 v.

12 Jesus Ernesto Dessens-Romero,
13 Defendant.
14

No. CR-22-00376-001-TUC-JCH (JR)

ORDER

15 In this case Defendant is charged with 12 counts related to conspiracy to transport
16 and transportation of illegal aliens resulting in a death. *See* Doc. 60 at 1. Before the Court
17 is Defendant's "Motion to Suppress Statements Taken in Violation of *Miranda*." Doc. 69.
18 Defendant argues primarily that his statements were coerced and taken despite his
19 unambiguous request for counsel. *See* Doc. 69 at 1, 8–9. The Court disagrees and will deny
20 Defendant's motion accordingly.

21 Defendant's motion is appropriate for decision without a hearing because the
22 statements at issue were video recorded, and there were no factual disputes. *See United*
23 *States v. Howell*, 231 F.3d 615 (9th Cir. 2000) (evidentiary hearing on motion to suppress
24 required only when contested issues of fact exist). Neither party requested a hearing, *see*
25 Doc. 70, and the Government submitted that the issue is appropriate for decision without
26 witness testimony. Doc. 76 at 10. Finally, Rule 41(e) of the Federal Rules of Criminal
27 Procedure provides that the court "shall receive evidence on any issue of fact necessary to
28 the decision of the motion." Here, the circumstances of Defendant's interrogation and

1 *Miranda* waiver were the subject of a video-taped interview. Doc. 69 at 1. The Court has
2 received transcripts of the interview, translated as necessary from Spanish to English, and
3 viewed a copy of the video. Docs. 69-1, 69-2, 69-3, 74-2. All evidence necessary to decide
4 the motion is thus before the Court.

5 **I. Legal Standards**

6 A defendant's constitutional rights are violated if police interrogation tactics render
7 the confession involuntary, or if a defendant's confession is obtained in violation of his
8 *Miranda* rights. See *Dickerson v. United States*, 530 U.S. 428, 432–35 (2000) (citing
9 *Miranda v. Arizona*, 384 U.S. 436 (1966)). The Court will suppress involuntary statements
10 obtained by "techniques and methods offensive to due process." *Haynes v. Washington*,
11 373 U.S. 503, 515 (1963). A statement is involuntary if "the defendant's will was overborne
12 at the time he confessed." *Id.* at 513. There is no "talismanic definition of 'voluntariness'"
13 that is "mechanically applicable." *Schneckloth v. Bustamonte*, 412 U.S. 218, 224 (1973).
14 Rather, the Court assesses the totality of all the surrounding circumstances. *Id.* at 226.
15 Those circumstances include "not only the crucial element of police coercion," but also the
16 length of the interrogation, its location, and its continuity. *Withrow v. Williams*, 507 U.S.
17 680, 693 (1993). They may also include the failure of the police to advise the suspect of
18 his rights, *Haynes*, 373 U.S. 503, 516–17 (1963), as well as any direct or implied promises
19 of a benefit. *Brady v. United States*, 397 U.S. 742, 753 (1970).

20 A defendant's constitutional rights are also violated by failure to comply with
21 *Miranda*. *Miranda* and its progeny govern the admissibility of statements made during
22 custodial interrogation. *Dickerson*, 530 U.S. at 432. Statements made while a defendant is
23 in "custody or otherwise deprived of [his] freedom of action in any significant way" that
24 are not preceded by *Miranda* warnings are inadmissible in evidence. *Miranda*, 384 U.S. at
25 444. For incriminating statements obtained during a custodial interrogation to be
26 admissible, any waiver of *Miranda* rights must be voluntary, knowing, and intelligent. See
27 *id.* at 479. A waiver of *Miranda* rights "is knowing and intelligent if, under the totality of
28 the circumstances, it is made with a full awareness of both the nature of the right being

1 abandoned and the consequences of the decision to abandon it." *United States v. Rodriguez-*
 2 *Preciado*, 399 F.3d 1118, 1127 (9th Cir. 2005) (citations and quotations omitted).

3 After a defendant has been informed of his *Miranda* rights, officers conducting a
 4 custodial interrogation have no obligation to stop and clarify an ambiguous invocation by
 5 the defendant of his right to have counsel present. *Davis v. United States*, 512 U.S. 452,
 6 459–60 (1994). Instead, they must cease interrogation only upon an objectively
 7 unambiguous, unequivocal invocation of that right. *See id.* at 462("maybe I should talk to
 8 a lawyer" is ambiguous); *Petrocelli v. Baker*, 869 F.3d 710, 723 (9th Cir. 2017) ("I'd sort
 9 of like to know what my ... lawyer wants me to do" is ambiguous); *United States v.*
 10 *Younger*, 398 F.3d 1179, 1187–88 (9th Cir. 2005) ("[B]ut, excuse me, if I am right, I can
 11 have a lawyer present through all this, right?" is ambiguous); *United States v. Doe*, 170
 12 F.3d 1162, 1166 (9th Cir. 1999) ("What time will I see a lawyer" is ambiguous). By
 13 contrast, an unequivocal invocation requires law enforcement officers to immediately cease
 14 questioning. *See Jones v. Harrington*, 829 F.3d 1128, 1137–39 (9th Cir. 2016). The Court
 15 recognizes that this standard "might disadvantage some suspects who—because of fear,
 16 intimidation, lack of linguistic skills, or a variety of other reasons—will not clearly
 17 articulate their right to counsel although they actually want to have a lawyer present."
 18 *Davis*, 512 U.S. at 460.

19 **II. Analysis**

20 This dispute is somewhat academic because the Government does not intend to
 21 introduce Defendant's statements made during the video-taped interview on November 1,
 22 2021. Doc. 76 at 4. In any event, the Government is entitled to do so.

23 Here is what happened. On November 1, 2021, Defendant was in Tennessee custody
 24 on an unrelated matter. Doc. 69 at 1. Two Tennessee agents interviewed Defendant, with
 25 agents from Arizona, including Assistant United States Attorney Rui Wang, appearing
 26 telephonically. Doc. 76 at 2. Shortly after the interview began, AUSA Wang sought to
 27 clarify that the Arizona agents were interested in a matter unrelated to Defendant's
 28 Tennessee case. *See* Doc. 69-2 at 2. AUSA Wang said,

1 [M]y guess is he's represented, and he's already pending charges on [] some
 2 other stuff, so ... if you can let him know that we're only here to ask him
 3 questions about ... completely separate things from whatever ... he's in
 [Tennessee custody] for. I just wanted to clarify that.

4 *Id.* A Tennessee agent asked Defendant, "[D]id you understand what she said?" *Id.*
 5 Defendant replied, "I did." *Id.* The Tennessee agent repeated, "We're not here to ask you
 6 any questions about your case that's going on right now. Because you already have a
 7 lawyer." *Id.* at 3. Defendant replied, "Alright." *Id.* The Tennessee agent repeated, "[T]he
 8 questions that we ask you, even though we might have asked you before, they're not related
 9 to this case at all." *Id.* Defendant replied, "Alright." *Id.* Defendant then asked, "It's
 10 something else?" *Id.* The Tennessee agent confirmed, "It's ... something else." *Id.* at 4.

11 The Tennessee agent then read Defendant his *Miranda* warnings in Spanish. Doc.
 12 69-2 at 4. The agent said, "I'm gonna read you your rights one more time, okay? And
 13 my Spanish is not as good as yours." *Id.* Defendant replied, "I already ... hear you the last
 14 time." *Id.* Both Defendant and the agent are referring to *Miranda* warnings given in Spanish
 15 in a previous interview. *See* Doc. 76 at 2; Doc. 74-1. The Tennessee agent said, "I'll let you
 16 look at [the *Miranda* warnings] with me, so while I read it you can ... read it along with
 17 me, okay?" *Id.* at 4–5. The agent then read Defendant the *Miranda* warnings in Spanish.
 18 *See id.* at 5. At one point, the agent stumbled in Spanish, and Defendant offered the correct
 19 word. *Compare id.*, with Doc. 74-2 at 10:25:37–39. The warnings concluded, "[If you
 20 decide to answer the questions now, you still have the right to stop the questioning at any
 21 time, or to stop the ... questioning to consult with [an] attorney]." *Id.* (English translation).

22 At this point, the following contested interaction occurred in English.

23 [Defendant]: And where is my lawyer now?

24 [Agent]: Where is your lawyer?

25 [Defendant]: Yeah.

26 [Agent]: Your- your lawyer for Robertson County, for this case?

27 [Defendant]: Yeah.

28 [Agent]: I have no idea. Again, we are not asking questions about that case.

[Defendant]: Alright. No, I'm gonna answer to you. I'm believing you. I'm gonna
 answer to you.

Doc. 69-2 at 5–6; Doc. 74-2 at 10:26:15–10:26:31. Defendant then signed and dated a

1 Spanish-language *Miranda* waiver. *See id.* at 6; Doc. 76-4 at 2.

2 Considering the totality of the circumstances, Defendant's statements and his
3 *Miranda* waiver were voluntary. There is no evidence of coercion. The mere presence of
4 police at a police interrogation is not inherently coercive. *Cf. Oregon v. Mathiason*, 429
5 U.S. 492, 495 (1977). The total interview is not long, just under two hours, Doc. 76 at 8,
6 Doc. 74-1 at 10:22:30–12:18:15, and Defendant was kept waiting less than half an hour
7 before it began. *See* Doc. 69-1 at 1. The agents repeatedly confirmed Defendant's
8 understanding of the difference between the Tennessee case and the interview's purpose.
9 And the agents read the *Miranda* warning in Spanish to Defendant and allowed Defendant
10 to read the warning in Spanish. Defendant read along while the Tennessee agent read aloud,
11 as evidenced by Defendant's quick correction of the agent's Spanish pronunciation of
12 "judicial." Defendant demonstrated his comprehension of English and familiarity with
13 *Miranda* throughout the start of the interview. Finally, the agents did not promise or
14 threaten any result if Defendant did or did not talk to them. *Cf. United States v. Okafor*,
15 285 F.3d 842, 846-47 (9th Cir. 2002) (distinguishing between threats and accurate
16 descriptions of a potential sentence given the charges).

17 Whether Defendant's waiver was knowing and intelligent is a closer question. Right
18 to counsel is offense specific. *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). Defendant
19 argues, in essence, that he did not understand that distinction or realize that he was entitled
20 to a lawyer in both the Arizona case and the Tennessee case. *See* Doc. 69 at 9. Some aspects
21 of the record could support that view. For example, before receiving the *Miranda* warnings
22 Defendant says, "I already ... hear you the last time." That could suggest that Defendant
23 did not understand why *Miranda* warnings were newly required. Similarly, after receiving
24 the *Miranda* warnings Defendant asks, "And where is my lawyer now?" That could suggest
25 that Defendant did not understand that his Tennessee lawyer or any other lawyer would not
26 appear unless he invoked his right to counsel.

27 Despite a limited basis in the record, the Court finds any inference that Defendant
28 did not understand his rights unwarranted. First, the *Miranda* warnings Defendant heard

1 clearly apply to all cases. For example, the Tennessee agent told Defendant, "[You have
2 the right to consult with an attorney before you make any statement or answer any
3 question]," Doc. 69-2 at 5 (English translation). The words "*any* statement or answer *any*
4 question" are sufficiently universal to convey the universal contours of the right. Second,
5 the context of the *Miranda* warnings made clear that Defendant could request an attorney
6 before answering questions about the Arizona case. Before Defendant heard the *Miranda*
7 warnings, AUSA Wang takes care to explain the difference between the two cases. There
8 is no indication that Defendant could not hear that portion of the discussion, or that his
9 English comprehension was inadequate to understand it. Defendant even confirms he
10 understands that it is a different issue. And, as discussed in more detail below, Defendant's
11 question about his lawyer was immediately clarified. The Tennessee agent confirms
12 Defendant is referring to his Tennessee lawyer and emphasizes that the questions do not
13 have to do with the Tennessee matter. Defendant replies, "Alright. No, I'm gonna answer
14 to you. I'm believing you." In context, Defendant means that he believes the agents will not
15 question him about the Tennessee matter and will answer their questions about the Arizona
16 matter. The final question, then, is whether Defendant invoked his right to an attorney
17 unambiguously, such that questioning should have ceased.

18 Defendant's statement "And where is my lawyer now?" was ambiguous because it
19 could have meant at least (1) "If I am entitled to a lawyer, why isn't one here?" or (2)
20 "Where is the lawyer from my Tennessee case?" Notably, neither question implies "I want
21 my lawyer before proceeding further." Even had Defendant's interrogation begun at that
22 point, no reasonable officer would think Defendant's right to counsel had been invoked.
23 Instead, faced with an ambiguous question, the Tennessee agent reasonably followed up
24 by asking a clarifying question. Defendant clarified that he was asking where his Tennessee
25 lawyer was. When the agent said he did not know where Defendant's Tennessee lawyer
26 was and emphasized "We are not asking you questions about that case," Defendant
27 immediately said, "Alright. No, I'm gonna answer to you. I'm believing you." In that
28 context, "I'm believing you" meant that Defendant believed the agents were not questioning

1 him about his Tennessee case. Together with "Alright" and "I'm gonna answer to you,"
2 Defendant's statements clearly signaled that he was not invoking his right to counsel,
3 ambiguously or otherwise.

4 For those reasons, Defendant's constitutional rights were not violated either through
5 police interrogation tactics rendering his statements involuntary, or through violation of
6 Defendant's *Miranda* rights.

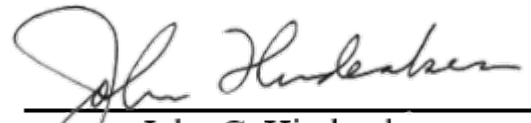
7 **III. Order**

8 Accordingly,

9 **IT IS ORDERED DENYING** Defendant's Motion (Doc. 69).

10 Dated this 23rd day of October, 2023.

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John C. Hinderaker
United States District Judge